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Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of

Revision of Part 2 of the Commission's Rules Relating to the Marketing and Authorization of Radio Frequency Devices	)))	**ET Docket No. 94-45 RM-8125**

COMMENTS OF SIEMENS BUSINESS COMMUNICATION SYSTEMS, INC. IN SUPPORT OF PETITION FOR RECONSIDERATION

Siemens Business Communication Systems, Inc. ("SBCS"), a subsidiary of Siemens Corporation, by its attorneys and pursuant to Section 1.429 of the Commission's rules, hereby files these comments in support of the Petition for Reconsideration and Clarification ("Petition") filed April 7, 1997, by Ericsson, Inc., in response to the Commission's February 12, 1997, Report and Order, FCC 97-31, issued in the above-captioned proceeding.

Siemens Corporation is a U.S.-incorporated subsidiary of a German corporation, with its U.S. headquarters located in New York, New York. Siemens Corporation employs approximately 50,000 workers at over 300 U.S. locations, including 93 manufacturing and assembly facilities, in its various U.S. businesses. Through these U.S.-based employees, Siemens Corporation participates in, among other things, the highly competitive marketplace for base station and handset equipment used in the provision of licensed and unlicensed wireless communications services. SBCS designs, tests and markets radio frequency ("RF") equipment in the U.S. but, like other U.S.-incorporated businesses, manufactures some of the RF equipment in overseas plants.

I. ELIMINATION, OR AT LEAST RELAXATION, OF THE IMPORT LIMITATIONS OF SECTION 2.803(h) OF THE COMMISSION'S RULES WOULD SERVE THE U.S. PUBLIC INTEREST

In its Petition, Ericsson requests reconsideration of the Commission's decision to adopt Section 2.803(h) of the rules which, by cross-reference to other provisions of the Commission's rules, imposes quantity limits on prototype RF equipment that can be imported for testing and customer evaluation (200 units) or for demonstration at trade shows (10 units) before receipt of an FCC equipment authorization. In adopting Section 2.803(h), the Commission denied the separate requests of Ericsson and Northern Telecom which filed comments recommending the elimination of the import limitations. These companies had argued that elimination of the import limitations would be consistent with the liberalized RF marketing rules being considered in this proceeding and would ensure that Commission rules would not discriminate unreasonably against imported RF equipment. The sole reason provided by the Commission in rejecting the requests to eliminate the import restrictions was as follows:

> Such a change would permit the importation of an unlimited number of products that have not been tested to demonstrate compliance with the standards or have not been authorized under the appropriate equipment authorization procedure. If such products were later found to be non-compliant with the standards, it might be impossible to recover them, with the result that significant interference problems could develop for other radio operations.

Report and Order at para. 32.

As described by Ericsson, however, the Commission's claimed intent to minimize "significant interference problems" is not promoted by new Section 2.803(h). Petition at 4. If the Commission's only concern was to minimize potential interference from non-compliant

prototype RF equipment, it would limit the number of prototype RF devices produced by domestic manufacturers as well as those imported by foreign manufacturers. In fact, however, the Commission expressly rejected requests that it impose a numerical limit on the number of prototype RF devices which could be operated prior to authorization. Report and Order at para. 19. As a result, U.S. manufacturers are allowed to test and demonstrate an unlimited number of RF products prior to equipment authorization. Foreign manufacturers, on the other hand, are handicapped in their efforts to develop products responsive to U.S. consumers' needs by the FCC's quantity limitations on imported prototype equipment.

The Commission has provided no evidence that prototype RF devices that are imported are more likely to cause unacceptable interference than domestically-produced devices. Moreover, as pointed out by Ericsson, the likelihood of recovering non-compliant RF equipment probably is greater for imported equipment than for domestically-produced equipment. Petition at 4. For imported RF equipment, but not for domestic equipment, the Customs Service paper trail at least provides regulators with the name and address of the party responsible for the equipment.

The Commission's assertion that the "importation limits . . . will still provide foreign manufacturers with sufficient flexibility to display and promote their products" is unsupported. See Report and Order at para. 32. Pre-compliance operation is necessary to determine if an RF device will perform as intended, to identify and correct malfunctions that were not detected in the prototype design process, to allow new products to be displayed at trade shows in order to gauge customer interest, to evaluate the interoperability of the prototype handsets with the network operator's infrastructure, to perform disability access research and

development, and otherwise to determine the acceptability of the RF products to potential customers. The existing import limits do not provide foreign manufacturers sufficient flexibility to meet these design and marketing requirements. Indeed, retention of the existing import limits will deprive the growing number of U.S. wireless service operators with the ability to decide based on actual test experience which of the many competing RF products in the market will serve the needs of their customers best. Moreover, by limiting foreign manufacturers' opportunity to conduct field tests with a wide variety of U.S. wireless service providers and U.S. organizations representing individuals with disabilities, the Commission's existing import limitation rules unintentionally may be hindering foreign manufacturers from developing expeditiously new wireless equipment compliant with new Section 255 of the Communications Act, 47 U.S.C. §255, which is intended to promote access to wireless services by persons with disabilities.[1/]

Even assuming for the sake of argument that the existing quantity limits on imported RF prototypes were reasonable when they last were examined in 1992,[2/] the Commission at least must acknowledge that the wireless marketplace has changed significantly in the intervening years. In 1992 the wireless market was dominated by a relatively few number of cellular providers, and manufacturers could focus their equipment customer evaluation efforts on these few providers. Manufacturers, therefore, needed fewer prototypes in order to conduct

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1/ See Implementation of Section 255 of the Telecommunications Act of 1996, WT Docket No 96-198, FCC 96-382, September 19, 1996.

2/ See Amendment of Part 2 of the Rules Concerning the Importation of Radio Frequency Devices Capable of Causing Harmful Interference, 7 FCC Rcd 4950 (1992).

customer evaluation tests with the major operators. Today, of course, with the auctioning of thousands of PCS and other wireless licenses, the number of potential wireless operators has exploded and is likely to increase in the future as additional wireless auctions are held. The existing import limitations do not allow foreign manufacturers adequately to demonstrate their prototype equipment to this growing number of U.S. providers.

Indeed, as discussed by Ericsson, manufacturers in today's competitive marketplace are being requested by numerous licensees and prospective operators who have won licenses in auctions to demonstrate their wireless products. Petition at 6. For example, each of the MTA operators for PCS typically request 50 or more prototype handsets to perform their internal evaluation. Manufacturers with foreign plants need a sufficient supply of prototype equipment in the U.S. to meet this increasing demand. Satisfaction of just a few of these PCS operator requests for prototype handsets quickly would exceed the 200 import limit established in the Commission's existing rules.

By retaining the current limitation on importing prototype RF devices, the Commission is placing foreign manufacturers at a severe competitive disadvantage to domestic manufacturers, a result that surely is not intended. Even if the Commission does not eliminate the import limitations of Section 2.803(h) in their entirety, the Commission at the least should recognize that the enormous increase in prospective wireless service operators warrants a proportionate increase in the authorized import levels for prototype RF equipment. Specifically, the Commission at the least should increase the import limits under Section 2.1204(a)(3) for equipment to be used for testing and customer evaluation from 200 units to 2,000 units and increase the import limits under Section 2.1204(a)(4) for equipment to be displayed and operated

at trade show demonstrations from 10 units to 50 units. Although such a modification may not resolve all the concerns of foreign manufacturers as expressed in Ericsson's Petition, the relaxation of the import limitations as recommended herein at least would constitute a beneficial interim step toward achieving the Commission's goal of promoting the rapid introduction of new RF products that will serve the needs of U.S. consumers.

II. THE COMMISSION SHOULD ALLOW MANUFACTURERS TO OPERATE PROTOTYPE RF EQUIPMENT AT TRADE SHOWS AND BUSINESS LOCATIONS WITHOUT A LICENSE OR SPECIAL TEMPORARY AUTHORITY

SBCS supports Ericsson's Petition with regard to Section 2.803(e)(7) of the Rules. See Petition at 7-8. The provision under Section 2.803(e)(7) that requires a "station license for any product that normally requires a license to operate" should not apply to manufacturers who intend only to demonstrate their prototype RF products at trade shows and other venues otherwise permitted under Section 2.803(e) of the rules.

The pre-existing requirement that manufacturers apply for special temporary authority ("STA") or a developmental or experimental license in order to test or to demonstrate non-approved RF equipment intended for use in licensed bands is an unnecessary regulatory burden. The marketplace for wireless equipment is highly competitive and increasingly fast-moving. Manufacturers cannot always plan their customer tests of prototype equipment intended for licensed use with sufficient advance notice that they can obtain an STA or experimental license on a timely basis. At least for tests and demonstrations conducted under the control of manufacturers, the Commission should treat all prototype RF equipment the same, regardless whether the equipment is intended for licensed or unlicensed use. The Commission should

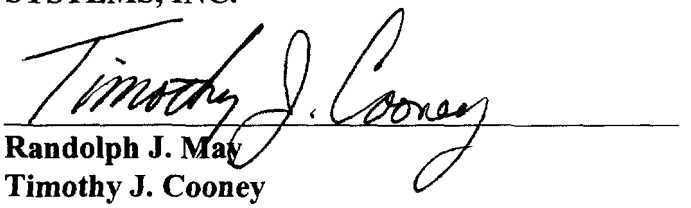
(1) establish as part of its rules the safeguards it deems necessary to allow operation by manufacturers of all types of prototype RF equipment prior to equipment authorization and (2) eliminate the requirement that manufacturers apply for licenses and/or STAs to operate at trade shows and other customer demonstrations those pieces of prototype RF equipment that are intended to be used in licensed bands.

III. CONCLUSION

For the foregoing reasons, the Commission should take action consistent with the views expressed herein.

Respectfully submitted

SIEMENS BUSINESS COMMUNICATION SYSTEMS, INC.



Randolph J. May
Timothy J. Cooney

Sutherland Asbill & Brennan, L.L.P.
1275 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

May 9, 1997

Its Attorneys

CERTIFICATE OF SERVICE

I, Marcia Towne Devens, do hereby certify that true and correct copies of the foregoing document, "COMMENTS OF SIEMENS BUSINESS COMMUNICATION SYSTEMS, INC. IN SUPPORT OF PETITION FOR RECONSIDERATION," filed in ET Docket No. 94-45, were served by hand or by first-class U.S. Mail, postage prepaid, this 9th day of May, 1997, on the following:

Mr. Richard M. Smith*/
Chief, Office of Engineering & Technology
FCC Stop Code 1300
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554

Mr. John Reed*/
Office of Engineering & Technology
Room 426
Federal Communications Commission
2000 M Street, N.W.
Washington, D.C. 20554

David C. Jatlow, Esq.
Young & Jatlow
2300 N Street, N.W.
Washington, D.C. 20037

*/ (Served by hand delivery)

Marcia Towne Devens